NO. 25-703

IN THE
Supreme Court of the United States

CALVARY CHAPEL SAN JOSE; MIKE MCCLURE,
Petitioners,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA; COUNTY OF SANTA CLARA; SARA H. CODY, M.D., in her official capacity as Health Officer for the County of Santa Clara,
Respondents.

On Petition for Writ of Certiorari to the California Court of Appeal, Sixth Appellate District

BRIEF OF ALLIANCE DEFENDING FREEDOM AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Alliance Defending Freedom is a non-profit, public-interest legal organization providing strategic planning, training, funding, and litigation services to protect Americans' constitutional rights—including the First Amendment right to the free exercise of religion. Since 1994, Alliance Defending Freedom has played a role, either directly or indirectly, in many cases before this Court. *E.g.*, *First Choice Women's Res. Ctr.* v. *Platkin*, No. 24-781 (U.S.); *Chiles* v. *Salazar*, No. 24-539 (U.S.); *Medina* v. *Planned Parenthood S. Atl.*, 606 U.S. 357 (2025); *303 Creative LLC* v. *Elenis*, 600 U.S. 570, 577 (2023); *Masterpiece Cakeshop, Ltd.* v. *Colorado C.R. Comm'n*, 584 U.S. 617 (2018).

As relevant here, Alliance Defending Freedom successfully represented numerous churches in challenges to COVID-19 restrictions on religious gatherings. *E.g.*, *Calvary Chapel Dayton Valley* v. *Sisolak*, 982 F.3d 1228 (9th Cir. 2020). Alliance Defending Freedom also frequently defends clients against California's campaign of hostility toward religious actors. *E.g.*, *NIFLA* v. *Becerra*, 585 U.S. 755 (2018); *Christian Med. & Dental Ass'n* v. *Bonta*, 625 F. Supp. 3d 1018 (C.D. Cal. 2022); *Foothill Church* v. *Watanabe*, 623 F. Supp. 3d 1079 (E.D. Cal. 2022).

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[1] No party's counsel authored this brief in whole or in part, and no person other than amicus and its counsel made any monetary contribution to fund the preparation or submission of this brief. Counsel were timely notified of this brief. S. Ct. R. 37.2.

SUMMARY OF THE ARGUMENT

The First Amendment broadly protects the free exercise of religion, ensuring that religious persons and institutions may practice their faith in accordance with their sincerely held beliefs. *Mahmoud* v. *Taylor*, 606 U.S. 522, 546 (2025). To that end, this Court has zealously guarded the right to gather for religious worship. *E.g.*, *Roman Cath. Diocese of Brooklyn* v. *Cuomo*, 592 U.S. 14 (2020) (per curiam). At times, the Court has permitted interference with religious gatherings. But when governments burden religious gatherings, they must comply with the First Amendment's "minimum requirement of neutrality." *Church of Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 532–46 (1993). When hostility to religion is present, even otherwise valid government sanctions issued pursuant to generally applicable laws must be set aside. *Masterpiece*, 584 U.S. at 634–40.

That is the case here. When examined against the backdrop of California's contemporaneous hostility to religious actors generally and religious gatherings in particular, Respondents' conduct raises the suspicion that the fines imposed on Calvary Chapel San Jose were motivated, at least in part, by hostility to religion. Throughout the pandemic, California consistently singled out religious actors for harsh treatment. And Respondents' treatment of the Chapel itself aligns with California's broader campaign of hostility to religious gatherings. Throughout its dealings with the Chapel, State entities engaged in unusual or unlawful investigative techniques.

All this raises at least "slight suspicion" of "animosity to [the Chapel] or distrust of its practices." *Id.* at 638–39 (quoting *Lukumi*, 508 U.S. at 547). That's enough to "set aside" the Chapel's fines "without further inquiry." *Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 525 n.1 (2022) (citation modified). The Court should grant the petition and summarily reverse.

ARGUMENT

I. The First Amendment precludes hostility toward religious actors.

"At its heart, the Free Exercise Clause ... protects the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of religious acts." *Mahmoud*, 606 U.S. at 546 (citation modified). For members of religious communities, few acts are more important than gathering together for worship. *E.g.*, *Roman Cath. Diocese*, 592 U.S. at 19. Though this Court's precedents sometimes allow restrictions on religious conduct, the First Amendment requires that governments act neutrally toward religious worship in their enforcement of generally applicable restrictions. *Lukumi*, 508 U.S. at 532–46.

The First Amendment's neutrality requirement precludes particularized instances of hostility to religious actors. *E.g.*, *Masterpiece*, 584 U.S. at 634–40. And the Amendment likewise prohibits a "campaign" of government conduct that "evidence[s] hostility to religion." *American Legion* v. *American Humanist Ass'n*, 588 U.S. 29, 60 (2019); accord, *e.g.*, *Lukumi*, 508 U.S. at 532–42.

That makes sense. "The Free Exercise Clause protects against governmental hostility which is masked, as well as overt." *Lukumi*, 508 U.S. at 534. That's why this Court has long recognized that the "[f]actors relevant to the assessment of governmental neutrality" include a broader examination of the government's conduct and the "historical background" of the relevant action challenged. *Masterpiece*, 584 U.S. at 639 (citation modified). A state or government actor's broader array of regulatory conduct can help smoke out "governmental hostility which is masked" by "facial neutrality." *Lukumi*, 508 U.S. at 534.

II. California's recent regulatory conduct exhibits hostility to religious actors.

California's broad array of recent regulatory conduct suggests a campaign of hostility toward religious actors. In recent years, the State and its municipalities have routinely singled out religious actors for unusually harsh treatment and interfered with the operation of religious organizations.

California frequently interferes with the operations of religious institutions. For example, in *NIFLA* v. *Becerra*, this Court rejected California's attempt to interfere with crisis pregnancy centers' operations by compelling speech that contradicted the centers' "deeply held ... religious precepts." 585 U.S. at 779 (Kennedy, J., concurring). Similarly, California has repeatedly sought to condition public benefits on a religious institution's willingness to alter its religious activities. *E.g.*, *CA Church, Preschool Again Free to Serve Children as Part of Food Program*, Alliance Defending Freedom (Jan 16, 2024), perma.cc/8NZD-DLYR.

In recent memory, California has also routinely forced religious actors to choose between their faith and significant state sanction. The State, for example, sought to force doctors to participate in assisted suicide against their religious objections. *Christian Med. & Dental Ass'n* v. *Bonta*, 625 F. Supp. 3d 1018 (C.D. Cal. 2022). And the State likewise sought to force churches to violate their faith by funding abortion. *Foothill Church* v. *Watanabe*, 623 F. Supp. 3d 1079 (E.D. Cal. 2022).

These are far from isolated examples. As one national study found, California consistently ranks near the bottom among states in its protection of religious liberty. *Religious Liberty in the States*, First Liberty Institute, https:/religiouslibertyinthestates.com/state/california/ (2025: 43/50; 2022–2024: 48/50). These actions provide part of the "historical background" for Respondents' enforcement action against Petitioners. *Lukumi*, 508 U.S. at 540.

III. California's pandemic-era campaign to stifle religious gatherings evinces hostility to religion.

The COVID-19 pandemic brought about some of "the greatest intrusions on civil liberties in the peacetime history of this country." *Arizona* v. *Mayorkas*, 143 S. Ct. 1312, 1314 (2023) (Gorsuch, J., statement). Few liberties were singled out for harsher treatment than the right of religious persons to gather together and worship. *Id.* at 1314–15. Nationwide, governments shuttered church doors, targeted particular religious communities, and "single[d] out houses of worship for especially harsh treatment." *Roman Cath. Diocese*, 592 U.S. at 17.

These rapid, ever-changing restrictions frequently put religious communities to an untenable choice: Face significant criminal and civil sanctions or suffer the irreparable harm that accompanies "the loss of free exercise rights for even minimal periods of time." *Tandon* v. *Newsom*, 593 U.S. 61, 64 (2021) (per curiam) (citation modified).

That broad array of harsh treatment demonstrated hostility to religious worship in many localities. And California was one of the Nation's worst offenders. The State consistently subjected religious gatherings to discriminatory treatment. And Respondents' unusual treatment of the Chapel aligns with California's campaign of hostility to religious gatherings generally.

A. Throughout the pandemic, California embarked on a campaign of hostility to religious gatherings.

California's pandemic regulations exhibited unique hostility to religious gatherings. From the pandemic's earliest days, California's restrictions on gatherings "facially discriminate[d] against religious exercise" and routinely singled out religious worship for particularly harsh treatment. Letter from Eric S. Dreiband, Assistant Attorney General, Civil Rights Division, to Governor Gavin Newsom at 2 (May 19, 2020), perma.cc/4XJJ-QFWQ. Rather than treat churches neutrally alongside other institutions, "[t]he State's spreadsheet summarizing its pandemic rules even assign[ed] places of worship their own row." *South Bay United Pentecostal Church* v. *Newsom*, 141 S. Ct. 716, 717 (2021) (Gorsuch, J., statement) (*South Bay II*).

From the outset, the State "openly imposed more stringent regulations on religious institutions than on many businesses." *Ibid*. While the State imposed a 25% occupancy cap on religious worship services, it exempted numerous comparable secular businesses, including "offices, supermarkets, restaurants, retail stores, pharmacies, shopping malls, pet grooming shops, bookstores, florists, hair salons, and cannabis dispensaries." *South Bay United Pentecostal Church* v. *Newsom*, 140 S. Ct. 1613, 1614 (2020) (*South Bay I*) (Kavanaugh, J., dissenting). As four Justices noted, that "discrimination against religious worship services contravene[d] the Constitution." *Id.* at 1614–15.

A mere year into the pandemic, this Court had "summarily rejected ... California's COVID restrictions on religious exercise" *six* times. *Tandon*, 593 U.S. at 64. This Court's first summary rejection came in *Harvest Rock Church* v. *Newsom*, 141 S. Ct. 889 (2020). There, the Court rejected California's tiered system that banned religious gatherings in some locales and subjected other gatherings to less favorable capacity restrictions than those applied to comparable secular activities. *Ibid*.

Undeterred, California continued to single out religious worship for particularly harsh treatment. Mere hours after this Court's decision in *Harvest Rock*, California banned *all* indoor religious gatherings in most of the state. Josh Blackman, *The "Essential" Free Exercise Clause*, 44 Harv. J.L. & Pub. Pol'y 637, 732 (2021). That made California's restrictions the most extreme in the country. *South Bay II*, 141 S. Ct. at 717 (Gorsuch, J., statement). Even where indoor worship was allowed, the State directly interfered with religious ceremonies by imposing a categorical ban on singing. *Id.* at 719–20.

In response, this Court roundly rejected California's latest attempt to prohibit indoor religious gatherings while permitting numerous other indoor gatherings. *Id.* at 716 (order); *Gish* v. *Newsom*, 141 S. Ct. 1290, 1290 (2021). As the Chief Justice explained, California's "determination—that the maximum number of adherents who c[ould] safely worship in the most cavernous cathedral [was] zero—appear[ed] to reflect not expertise or discretion, but instead insufficient appreciation or consideration of the [free-exercise] interests at stake." *South Bay II*, 141 S. Ct. at 717 (Roberts, C.J., concurring).

And while the Court did not enjoin the categorical ban on singing during religious gatherings, five Justices expressed concern with California's apparent decision to provide secular—but not religious—exemptions to that restriction. *Ibid.* (Barrett, J., concurring); *id.* at 719–20 (Gorsuch, J., statement).

Despite this Court's clear commands in *South Bay II* and *Gish*, Respondent Santa Clara County continued to enforce its total prohibition on indoor religious gatherings. See *Gateway City Church* v. *Newsom*, No. 21-15189, 2021 WL 781981, at *1 (9th Cir. Feb. 12, 2021). The County's belligerence required this Court's intervention once more, with the Court again enjoining the total ban on indoor religious gatherings. *Gateway City Church* v. *Newsom*, 141 S. Ct. 1460, 1460 (2021). That outcome was "clearly dictated" by *South Bay II*. *Ibid.*

Still, California continued to enforce restrictions that singled out religious gatherings for harsher treatment than comparable secular gatherings. The State continued to defend its limitation on religious gatherings in homes to three households. *Tandon*, 593 U.S. at 63. At the same time, California allowed "hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants to bring together more than three households at a time." *Ibid.*

In *Tandon*, this Court intervened again and enjoined California's restrictions on at-home religious gatherings. *Id.* at 62. The majority found this conclusion "unsurprising" in light of the Court's repeated rejections of California's singling out of religious worship for harsh treatment. *Id.* at 64. In the Court's view, California's conduct suggested that the State "assume[d] the worst when people go to worship but assume[d] the best when people" engage in other secular conduct. *Ibid.* (quoting *Roberts* v. *Neace*, 958 F.3d 409, 414 (6th Cir. 2020) (per curiam)).

California's conduct throughout the pandemic—consistently singling out religious gatherings and people of faith for harsh treatment—is paradigmatic religious hostility. The State's broader conduct frames the "historical background" of and "specific series of events leading" to Respondents' enforcement action against the Chapel and informs the Free Exercise Clause's neutrality analysis. *Lukumi*, 508 U.S. at 540.

B. Respondents' treatment of the Chapel aligns with California's campaign of hostility to religious gatherings.

Throughout their dealings with the Chapel, State entities engaged in unusual or unlawful investigative techniques that they did not typically use with secular organizations and businesses. These government actions similarly inform the neutrality analysis and suggest that Respondents' treatment of the Chapel was motivated in part by "animosity to religion or distrust of [religious] practices." *Masterpiece*, 584 U.S. at 639 (quoting *Lukumi*, 508 U.S. at 547).

Consider a few examples. As the Chapel alleges in separate litigation, the County targeted the Chapel in a year-long, warrantless geofencing operation, in which the County collected extensive location data from churchgoers' cell phones. First Am. Compl. at 1–3, 5–7, *Calvary Chapel San Jose* v. *Santa Clara Cnty.*, No. 3:23-cv-04277-VC (N.D. Cal. Oct. 27, 2023), Dkt. No. 27. According to the allegations, government officials used location data to track cell phones on the Chapel's property—including into prayer rooms and bathrooms—and then had a Stanford University research team analyze it to justify millions in fines.

The State's Division of Occupational Safety and Health launched an investigation and fined the Chapel's school for alleged violations of pandemic protocols. *In the Matter of the Appeal of Calvary Chapel of San Jose*, No. 1564732, 2024 WL 3572909 (Cal. Occupational Safety & Health App. Bd. July 24, 2024). But the Division later abandoned the fines after the State's Appeal Board found significant errors in the Division's investigation.

The Division also searched the school under an administrative warrant that the State's Appeal Board concluded was so lacking in indicia of probable cause that it was unreasonable for Division inspectors to rely on. *Id.* at *2–3. Worse, the Appeal Board found that officials had recklessly misled the judge who issued the warrant. *Id.* at *5–6. The officials omitted key details that "directly undermine[d] the Division's assertion" that its officials observed violations of pandemic protocols at the Chapel's school. *Id.* at *6. These omissions made the Division's warrant application "substantially misleading and hindered the inference-drawing powers of the judge." *Ibid.*

IV. Respondents' hostility to religious gatherings warrants summary reversal.

California's hostility to religious gatherings, combined with the Superior Court's exorbitant fines, warrants summary reversal. S. Ct. R. 16.1. "The Free Exercise Clause bars even subtle departures from neutrality on matters of religion." *Masterpiece*, 584 U.S. at 638 (citation modified). "[E]ven slight suspicion" of "animosity to religion or distrust of its practices" triggers searching First Amendment analysis. *Id.* at 638–39 (quoting *Lukumi*, 508 U.S. at 547). When evidence of hostility exists, this Court has "set aside" associated state sanctions "without further inquiry." *Kennedy*, 597 U.S. at 525 n.1 (citation modified). That means the sanction must be set aside even if the underlying conduct is otherwise regulable under *Smith*'s general applicability framework. *Masterpiece*, 584 U.S. at 639–40.

When examined against California's contemporaneous hostility to religion generally and religious gatherings in particular, the "historical background" and "specific series of events leading" up to the Chapel's fines raise the suspicion that Respondents were motivated, in part, by hostility to religion. *Lukumi*, 508 U.S. at 540. California consistently singled out religious actors for harsh treatment and regulated based on the assumption that persons gathering for religious worship could not be trusted. See *Tandon*, 593 U.S. at 64. All this suggests that the Respondents' actions were part of a "campaign" of government conduct "evidenc[ing] hostility to religion." *American Legion*, 588 U.S. at 60.

What's more, Respondents' treatment of the Chapel itself aligns with California's broader campaign of hostility to religious gatherings. The investigative techniques and reckless misleading of a judge raise at least "slight suspicion" of "animosity to [the Chapel] or distrust of its practices." *Masterpiece*, 584 U.S. at 638–39 (quoting *Lukumi*, 508 U.S. at 547). That is enough to "set aside" the fines "without further inquiry." *Kennedy*, 597 U.S. at 525 n.1 (citation modified).

In multiple cases, this Court has "summarily rejected ... California's COVID restrictions on religious exercise." *Tandon*, 593 U.S. at 64. It should do so again here. Because California's regulation of religious worship exhibited hostility "toward people of faith in general" and the Chapel "in particular," *Roberts*, 958 F.3d at 413, this Court should grant the petition and summarily reverse.

CONCLUSION

The petition for certiorari should be granted and the judgment of the California Court of Appeal summarily reversed.

Respectfully submitted,

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